

1 **JANE LUCIANO, ESQ SBN #124263**
2 **LUCIANO LAW**
3 **9000 Crow Canyon Road Ste #168**
4 **Danville, California 94506**
5 **(925) 216-6030**
6 **jane-luciano@comcast.net**
7 *Attorney for Plaintiff and the Class*

8 **WILLIAM D. McCANN SBN NV #12038**
9 **P. O. Box 876**
10 **Genoa, Nevada, 89411**
11 **(925) 998-8099**
12 **wdmccann@gmail.com**
13 *Attorney for Plaintiff and the Class*
14 *Pro Haec Vice Status Pending*

15

16 **FEDERAL DISTRICT COURT FOR THE NORTHERN**
17 **DISTRICT OF CALIFORNIA**

18 **CLAUDE B. HUTCHISON individually and**
19 **on behalf of that class of individuals over 70**
20 **years of age who purchased Home Warranty**
21 **Insurance from Defendants nationwide other**
22 **than 'citizens' of New Jersey.**

23 **Plaintiff,**
24 **vs**
25 **CHW Group Inc., dba CHOICE HOME**
26 **WARRANTY, a New Jersey Corporation**
27 **VICTOR HAKIM**
28 **VICTOR MANDALAWI**
29 **DAVID SERUYA**
30 **INDIVIDUAL DOES 1-15**
31 **CORPORATE DOES 1-15**

Case No.

CLASS ACTION

COMPLAINT FOR DAMAGES ARISING
FROM CONSUMER FRAUD, BREACH OF
CONTRACT, IN THE ALTERNATIVE,
RESCISSION, INSURANCE BAD FAITH
ELDER ABUSE DECLARATORY
RELIEF REQUESTED

JURY DEMANDED

27 **Defendants**

1 I.THE PARTIES

2 1.Plaaintiff Claude B. Hutchison is a resident of the State of Nevada, and, for
3 diversity jurisdictional purposes, a 'citizen' thereof and the owner of real property in the County
4 of Monterey, California, for which he bought a policy of home warranty insurance from
5 Defendants. He is over 70 years of age. Having had an illustrious career including government
6 service in Washington D.C., and as a Regent of the University of California, Plaintiff is highly
7 qualified to represent this class.

8 1. Plaintiff class is that group of individuals over 70 years of age resident in all
9 states wherein defendants do business (other than the State of New Jersey) who purchased
10 policies of home warranty insurance from Defendants and who had warranty claims denied,
11 delayed, or underpaid by Defendants. This is a class of defendants particularly vulnerable
12 to the predations of Defendants.

13 2. Defendant CHW Group, Inc., (hereinafter CHW) is a New Jersey corporation doing
14 business as 'Choice Home Warranty' nationwide, including within the State of California.
15 It offers so called 'home warranty protection' insurance to homeowners in exchange for
16 premiums.

17 3.Individual defendants Victor Hakim, Victor Mandalawi, David Seruya, and Maria
18 Ramirez are owners, officers and/or directors of CHW. The individual defendants are all
19 residents of New Jersey. The individual defendants are the *alter egos* of CHW, in that CHW
20 has no corporate identify separate from that of the individual defendants, and they use the
21 corporate fiction to mask their illegal activities and as a shield from liability.

22 4. Plaintiff does not know the identities of Doe Defendants I through 10 or Black and
23 White Corporations 1-10 but believes that there are other individuals and corporations
24
25 COMPLAINT

1 legally responsible for the damages sustained by Plaintiff and the Class, and begs leave
2 to amend this pleading to include them when they have been identified through discovery.
3 All the corporate, individual, and Doe defendants will be referred to, hereinafter, as
4 “Defendants”.

5

6 II. JURISDICTION AND VENUE

7 5. This Court has jurisdiction over this class action by virtue of 28 U.S.C. 1332 (a) 1.
8 Plaintiff’s ‘citizenship’- and causes of action on behalf of the class - satisfy the requirements of
9 ‘minimal’ diversity. In an abundance of caution Plaintiff does not purport to represent
10 class members who are citizens of New Jersey in order to achieve complete diversity.
11 Venue is in this district by virtue of 28 U.S.C. 1931 (b) (2) in so far as Plaintiff’s property
12 is located in Monterey County, California, and a substantial portion of the wrongs alleged
13 occurred in Monterey County, California. Specifically, the claims occurred in territory
14 serviced by the San Jose Division of this Court. The jurisdictional amount in controversy of
15 \$75,000.00 (Seventy-five thousand dollars) of this court is exceeded by plaintiff’s special,
16 compensatory, and punitive damages. Should the class of elderly victims of Defendants be
17 certified, their accumulated damages exceeds many millions of dollars. Plaintiff will comply
18 specifically with Federal Rule of Civil Procedure 23 in a timely and appropriate manner.

19

20 III. PLAINTIFF’S CLAIMS

21

22 A. BREACH OF CONTRACT

23 6. Plaintiff entered into a written contract with Defendants whereby Defendants, in return for
24 payment of a substantial premium, promised to indemnify him for loss/damage to/ and wear
25 of certain appliances in his Carmel Valley, California home, including an electric range. Plaintiff
26 paid for a multi-year contract of appliance protection for two properties, including the Carmel
27 COMPLAINT

1 Valley, California home. Within the last 12 (twelve) months immediately preceding the filing of
2 this complaint, an electric range failed. Defendants sent a licensed contractor to examine the
3 range, who made a determination that the range needed replacement. The replacement cost of the
4 range, in so far as the model insured was no longer made, and due to the size constraints of the
5 kitchen, was approximately \$9,000.00 (Nine thousand dollars)

7. Plaintiff performed his duties under Defendants policy of insurance, including payment of
8 premium, reporting the loss, and cooperating with Defendants repair/replacement professional
9 who made the assessment set forth in 6, *supra*.

10. Defendants breached their obligations under the contract of insurance by:

12. a. Intentionally low-balling their offer of indemnity at \$300.00 (Three hundred dollars)
13. without providing justification for such an offer. The offer was unreasonable, *per se*.
14. This is a pattern and practice engaged in by Defendants nationwide. A relatively recent incident
15. involving seniors can be viewed at <https://www.youtube.com/watch?v=N6ntBiaNkxg> which
16. demonstrates that the pattern of 'low-balling' claimants is nationwide and directed primarily, it
17. would appear, at seniors who are a vulnerable class.

19. b. Intentionally delaying payment

20. c. Creating untenable excuses for non-payment and unrealistic recovery limits.

21. d. Failing to respond to Plaintiff's communication demanding payment

23. e. Failing to pay anything to Plaintiff

24. f. Causing plaintiff extreme emotional suffering in so far as his wife of 60 (sixty years)
25. passed away as this dispute was going on, in the Carmel Valley Home, at a time where
26. there was no range available in the kitchen, specifically on May 4th, 2024, the date of
27. Mrs. Hutchison's death.

1 9. As a proximate result of said breach, Plaintiff and the representative class have sustained
2 special damages, compensatory damages, attorney's fees and costs. Plaintiff additionally
3 requests an award of punitive damages pursuant to California Civil Code 3294, in so far as
4 Defendants have been guilty of fraud, oppression, and malice. Defendants scheme to defraud
5 potential insureds, particularly, elderly insureds, has been in existence for over a decade, and
6 specifically proven by the work of two State Attorney Generals, specifically, by the Attorney
7 General of the State of New Jersey, CHW's home state, in *Attorney General of the State of New*
8 *Jersey v. CHW Group Inc., C-135-14 (2016)* (hereinafter 'New Jersey Regulatory Suit' or
9 NJRS) and by the Attorney General of the State of Arizona in *State of Arizona v. CHW Group*
10 *Inc., CV-2019-013111 (2019)* (hereinafter the Arizona Regulatory Suit or AZRS)

13 A. RESCISSION PURSUANT TO CALIFORNIA CIVIL CODE 1689

14 10. Plaintiff reincorporates and reallege allegations 1 through 9 as though fully set forth
15 herein.

16 11. Plaintiff's consent to enter into the contract of home warranty insurance was induced
17 by fraud, specifically, Defendants intended to low-ball any claims made by Plaintiff under his
18 home warranty to ensure that the amount of premiums he paid always exceeded any amount
19 of money they would owe him for appliances in need of replacement/repair under the policy
20 in violation. See, California Civil Code 1689 (1).

21 12. The consideration Plaintiff paid for the policy of home warranty insurance failed.
22 That is to say, for the thousands of dollars in premiums paid Defendants, Plaintiff did not
23 receive a dime in compensation. See, California Civil Code 1689 (2)

24 13. The consideration given became void as a proximate result of the wrongdoing by
25 Defendants, set forth *supra*, and in the pleadings and settlement agreements in NJRS and
26 COMPLAINT

1 AZRS. Plaintiff will in due course ask this Court to take judicial notice of the allegations,
2 findings, and admissions in the settlement agreement of these proceedings pursuant to
3 Rule 201 of the Federal Rules of Evidence. See, California Civil Code 1689 (3).
4

5 14. The consideration for the obligation of Plaintiff to pay premiums failed before it
6 was rendered to him. See, California Civil code 1689 (4)

7 15. The public interest will be prejudiced by permitting the contract to stand. Specifically,
8 contains three adhesive provisions which are void as against public policy:

9 a. A waiver of attorney's fees and punitive damages
10 b. A waiver of a class action remedy and
11 c. A purported mandatory mediation and arbitration clause requiring arbitration
12 before the American Arbitration Association.

13 On May 23rd, 2024, Plaintiff wrote Defendants placing them on notice of the illegality of
14 these provisions, requesting payment under the policy, and asking for mediation.
15

16 Defendants never responded to this letter, though it was sent by Certified Mail and
17 receipt of it was acknowledged. So, Defendants **waived** said mediation and arbitration
18 provision.

19 The trifecta of these three adhesive provisions is evidence **per se** of Defendants fraud
20 malice, and *oppression* in so far as a consumer, in order to invoke the jurisdiction of the
21 American Arbitration Association, must pay a \$3,125.00 (Three thousand one hundred and
22 twenty-five dollar) so-called *case initiation fee*, which, the evidence will show, is far greater
23 than the average cost of repair/replacement of an appliance under Defendants policies.
24

25 So, selection of the American Arbitration Association as the vehicle for a binding arbitration
26 was intended to defraud Plaintiff – and the Plaintiff class – by disincentivizing victims from
27
28 COMPLAINT

1 paying out monies in excess of the benefits due to them – and in furtherance of their
2 pattern and practice or either withholding, or low- balling, benefits payable under the policy. See,
3 California Civil Code 1689 (6).

4
5 16. Plaintiff therefore requests an order rescinding the contract of home insurance and
6 restitution of the premium thereunder, individually, and should the class of victims be
7 certified, on their behalf. All such contracts containing the provisions cited *supra*
8 are meretricious and void on its face. If Defendants, in view of the foregoing
9 facts, petition this Court to mandate Arbitration before the American Arbitration Association,
10 Plaintiff will not only vigorously contest the same but request an award of attorney's fees
11 and costs in so doing.

12
13 C.INSURANCE BAD FAITH CALIFORNIA INSURANCE CODE 17200

14 17. Plaintiff reincorporates and reallege allegations 1 through 16 as though fully set forth herein.
15
16 18. The policy of home warranty insurance issued by Defendants on Plaintiff's Carmel
17 Valley, California, home are insurance contracts governed by the California Insurance Code
18 and regulated by the California Department of Insurance.

19 19. Defendants violated California Insurance Code Section 790.03 (h) 5 and 6 by not attempting,
20 in good faith, to effectuate prompt, fair, and equitable settlements of claims in which liability has
21 become reasonably clear, compelling insureds to institute litigation to recover amounts due under
22 an insurance policy by offering substantially less than the amounts which would ultimately
23 recovered in actions brought by the insureds, when the insureds have made claims for amounts
24 reasonably similar to the amounts ultimately recovered. The Defendants are estopped from
25 denying coverage by the admissions of their own agent that the range in question needed
26
27

replacement and there is no dispute of fact that the replacement cost exceeded \$9,000.00 (Nine thousand dollars)

20. Defendants are guilty of insurance bad faith, and Plaintiff has, and herewith asserts, a private right of action pursuant under Business and Professions Code 17200 as mandated by the California Supreme Court in *Zhang v. Superior Court* 178 Cal. App. 4th 14 (2013) for the emotional damages arising from violation of California Insurance Code Section 790.03 (h) 5 and 6. As has been noted, *supra*, all of Plaintiff's interaction with Defendants and/or their so-called adjusters occurred during the final days of his wife of 60 (sixty) years Susan, who passed away as this dispute was unfolding, and contributed to and accelerated Plaintiffs emotional pain and suffering.

21. Plaintiffs have sustained damages as a result of Defendants' breaches of the policy of homeowner's warranty insurance including special damages, compensatory damages, attorney's fees, and costs, and will ask this Court to award a quantum of punitive damages against Defendants to disincentivize them from injuring other prospective customers, prospective insureds. as set forth, *supra*.

ELDER ABUSE CALIFORNIA WELFARE INSTITUTIONS CODE 15610.30

22. Plaintiff reincorporates and reallege allegations 1 through 21 as though fully set forth herein.

23. Well aware that many of their targeted customers were elderly and/or on living on retirement funds, and afraid of large bills for replacement of household appliances, Defendants intentionally willfully, wantonly, and fraudulently intended to accept premiums from such individuals knowing that they would ‘low-ball’ and/or delay any claims that they might make and made sure that they signed an agreement waiving their right to damages, or attorney’s fees, or the remedy of a class action, and saddling them with an impossible remedy, arbitration of any

1 disputes before the American Arbitration Association which would typically require a
2 litigation set up deposit far in excess of the average value of claims made under their policies.

3 24. California Welfare and Institutions Code 15610. 30 provides as follows:

4 (a) *“Financial abuse” of an elder or dependent adult occurs when a person or*
5 *entity does any of the following:*

6 (1) *Takes, secretes, appropriates, obtains, or retains real or personal property of an elder*
7 *or dependent adult for a wrongful use or with intent to defraud, or both.*

8 25. Plaintiff is an ‘elder’ under this statute and has suffered ‘financial abuse’ as defined by this
9 statute in so far as the premiums paid by Plaintiff are personal property appropriated with an
10 intent to defraud him.

11 25. The members of the prospective class are ‘citizens’ of states which have similar
12 protections for elders. For example, Nevadans over age 60 (sixty) are protected by
13 N.R.S. 41.1395 from financial abuse. In Arizona, the Arizona Adult Protective Services
14 statutes allow civil recovery of an elder’s property -including funds – through a civil suit.
15 Plaintiff has carefully refined the class of victims he proposes to represent, for the purposes of
16 this cause of action, to those over 70 who have paid premiums to Defendants without recourse,
17 resident in those states which have special statutes to protect them.

18 26. These Defendants are guilty of financial abuse of Plaintiff in that their receipt of premiums as
19 contemplated by the California Elder Abuse Statutes in so far as their receipt of premiums
20 without consideration is a wrongful ‘taking’ of his personal property, as evidenced by
21 their failure to adequately compensate him for his claim, their delay in compensating him
22 for his claim (they failed to do so entirely) and their attempt to co-opt his remedies against
23 him by requiring him to sign an adhesive contract containing a trifecta (as noted *supra*)

1 of waivers that are against public policy and therefore null and void.

2 27. As a direct and proximate result of these Defendants' violation of California Elder Abuse
3 Statutes, Plaintiff sustained recoverable damages as provided by law.

4 28. As a direct and proximate result of these Defendants' violation of California's Elder
5 Abuse Statutes, Plaintiff is entitled to an award of attorney's fees and costs.

6 29. These Defendants' policies, acts, and omissions set forth in the foregoing 28 allegations,
7 are 'unfair business practices' within the contemplation of California Civil Code § 3345 and
8 Plaintiff therefore requests that any damages and attorney's fees awarded pursuant to California
9 Elder Abuse Statutes be trebled.

10 11 E. DECLARATORY RELIEF 28 U.S.C. 2201

12 13 30. Plaintiff reincorporates and reallege allegations 1 through 29 as though fully set forth herein.

14 31. There is an actual controversy between Plaintiff and Defendants as to the force, effect,
15 validity of the homeowner's warranty policy issued by Defendants to Plaintiff.

16 32. Plaintiff requests that this Court adjudicate the validity of said contract, specifically,
17 the validity of the trifecta of waivers contained therein. And, pursuant to Federal Rule of
18 Civil Procedure 57, Plaintiff requests that such adjudication be a speedy one.

19 20
21 22 Wherefore, Plaintiff Prays:

23 24 1. That the class hereinbefore defined be certified pursuant to Federal Rule of
Civil Procedure 23.

25 26 2. That Plaintiff and the putative class be awarded his and their special damages
27 3. That Plaintiff and the putative class be awarded his and their compensatory damages
28 4. That Plaintiff and the putative class be awarded damages by way of punishment

1 and example under the various theories set for *supra*.

2 5. That Plaintiff and the putative class be awarded their attorneys' fees, and that such
3 attorney's fees be enhanced by virtue of the benefit this action confers on the class
4 of elderly folk prayed on by Defendants
5
6 6. That Plaintiff be awarded adequate compensation for representing the class.
7
8 7. That Plaintiff be awarded his costs of suit.
9
8 8. That this case be tried by a jury
9
9 9. That this court issue a declaratory judgment declaring the homeowner's warranty
10 contract between Plaintiff and Defendants null and void as against public policy.
11
10 10. That Plaintiff be granted such other and further relief as the Court deems
11 appropriate.
12
13

14 /s/Jane Luciano/s/

15 WILLIAM D. McCANN ESQ.

16 JANE LUCIANO, ESQ.

17 *For*

18 CLAUDE B. HUTCHISON

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COMPLAINT

12